IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7767 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRA RAMANAND UPADHYAY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7767 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 27th July, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of power

under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonimous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order and that he is required to be immediately prevented from pursuing his illegal activities. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate Mrs. Subhadra Patel has mainly contended that there is improper exercise of power under Section 3 of the Constitution of India, as the satisfaction recorded by the detaining authority about the immediate need of detaining the petitioner for preventing him from pursuing his illegal and anti-social activities cannot be considered as genuine as there was no basis therefor. To support this contention, she submitted that the detenu was in judicial custody when the order was passed. The detenu had not applied for bail at that point of time. Only on presumption that he may apply and may get bailed out the detention order is passed. According to her this is not permissible and this would vitiate the order of detention. She has relied on the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675 and submitted that the petition may be allowed.

4. Learned AGP Mr. S.S. Patel has opposed this petition.

5. Having regard to the contentions raised before this Court it is very clear from palin reading of the grounds of detention that when the order of detention was passed the detenu was in custody. The observation of the authority that he may apply for bail and may get bail and then pursue his illegal activities, is without any basis. In this regard, decision relied upon by Mrs. Patel would profitably be relied. It would squarely apply to the

facts of the present case. The power exercised by the detaining authority in the instant case would therefore get vitiated for the reason that because the detenu was in custody there was no question of his pursuing his illegal activities and consequently, there was no immediate need for detaining him under PASA. There is a difference between getting bail and applying for bail. There is absence of material even to indicate that the petitioner had applied for bail. Under the circumstances, the petition deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 27th July, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad is hereby quashed and set aside. Detenu Dharmendra Ramanand Upadhyay be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas